114-429

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 237.

THE UNITED STATES, PLAINTIFF,

vs.

WILLIAM G. PETIT, ALIAS WILLIAM GEORGE.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED JULY 10, 1882.

And by the English original Habeas Corpus Act, inflicting the punishment of imprisonment in a place *outside* of England, upon an Englishman, was made highly penal.

1 Bish. Crim. Prac., §§ 886, 888.

1 Chitty Crim. Law, 799, 800.

And by the United States acts of 1825, 1834, and 1835, above referred to, all the prisons must be *within the district where the Court is holden.*

As to the special legislation.

The case of Karstendick, 93 U. S. (so similar to the present case), recognizes the above doctrine as to the place of imprisonment, and the doctrine first above discussed that the record *must show* jurisdiction to sentence the prisoner *outside* the district, and recognizes the doctrine that it can not be presumed that there is no suitable place within the district, or *that the attorney-general had made this designation.* How can any order of the *attorney-general* be presumed?

There must be jurisdiction to give the judgment rendered as well as to hear and determine the case. If a magistrate having authority to fine for assault and battery should sentence to death, his judgment would be as much a nullity and *void* as if the preliminary jurisdiction to hear and determine had not existed.

I submit that there can not be any doubt that this prisoner is entitled to his discharge.

ALFRED RUSSELL,

Counsel for Petitioner.

And by the English original Habeas Corpus Act, inflicting the punishment of imprisonment in a place *outside* of England, upon an Englishman, was made highly penal.

1 Bish. Crim. Prac., §§ 886, 888.

1 Chitty Crim. Law, 799, 800.

And by the United States acts of 1825, 1834, and 1835, above referred to, all the prisons must be *within the district where the Court is holden*.

As to the special legislation.

The case of Karstendick, 93 U. S. (so similar to the present case), recognizes the above doctrine as to the place of imprisonment, and the doctrine first above discussed that the record *must show* jurisdiction to sentence the prisoner *outside* the district, and recognizes the doctrine that it can not be presumed that there is no suitable place within the district, or *that the attorney-general had made this designation*. How can any order of the *attorney-general* be presumed?

There must be jurisdiction to give the judgment rendered as well as to hear and determine the case. If a magistrate having authority to fine for assault and battery should sentence to death, his judgment would be as much a nullity and *void* as if the preliminary jurisdiction to hear and determine had not existed.

I submit that there can not be any doubt that this prisoner is entitled to his discharge.

ALFRED RUSSELL,

Counsel for Petitioner.

114-429

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 237.

THE UNITED STATES, PLAINTIFF,

vs.

WILLIAM G. PETIT, ALIAS WILLIAM GEORGE.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED JULY 10, 1882.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 237.

THE UNITED STATES, PLAINTIFF,

vs.

WILLIAM G. PETIT, ALIAS WILLIAM GEORGE.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
Caption	1	1
Information	2	1
Plea to jurisdiction	4	2
Order sustaining plea, &c	5	2
Certificate of division in opinion	6	3
Order for transcript of record	8	3
Clerk's certificate	9	4

1 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States for the eastern district of Missouri.

Be it remembered that on the 23d day of February, A. D. 1882, there was filed in the office of the clerk of the circuit court of the United States for the eastern district of Missouri a certain criminal information, which said information is in the words and figures following, to wit:

2 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in and for said district, at the September term thereof, A. D. 1882.

Now comes William H. Bliss, attorney of the United States in and for said district, and gives the said court here to understand and be informed that William G. Petit, alias William George, late of the said district, on the seventh day of July, in the year of our Lord one thousand eight hundred and eighty-two, at the said district, did pass, utter, and publish to and upon one George M. Sohns one certain falsely made, forged, and counterfeited coin, which said coin was then and there in the resemblance and similitude of a true and genuine silver coin of the denomination of a half dollar theretofore coined at the mints of the United States, he, the said William G. Petit, alias William George, then and there knowing said coin to be false, forged, and counterfeit, and with intent then and there on the part of him, the said William G. Petit, alias William George, to defraud the said George M. Sohns and certain persons to said attorney unknown, contrary to the form of the statute of the said United States in such case made and provided, and against their peace and dignity.

Whereupon the said attorney prays, on behalf of the said United States, the consideration of said court in the premises, and that due process of law may be awarded against the said William G. Petit, alias William George, to require him to answer to the said United States touching and concerning the premises aforesaid.

WILLIAM H. BLISS,
United States Attorney, Eastern District of Missouri.

3 (Indorsed:) No. 1965. A. D. 1882. September term. United States district court, eastern district of Missouri. United States of America vs. William G. Petit, alias William George. Criminal information. William H. Bliss, U. S. att'y. Witnesses. Filed Feb'y 23, 1882. M. M. Price, cl'k.

4 And afterwards, to wit, on the 21st day of March, A. D. 1882, the following plea to jurisdiction was filed in said cause, to wit:

Plea to jurisdiction.

UNITED STATES OF AMERICA,
Eighth Judicial Circuit, East Dist. Mo., ss:

UNITED STATES
vs.
WM. GEORGE PETIT.

And now comes the above-named defendant, Wm. Geo. Petit, by his att'y, Frank M. Estes, and says that the United States ought not further prosecute this cause for the reason that the court has no jurisdiction herein, the charge against defendant of passing counterfeit money being presented upon information which is in contradiction of art. 5, amend't Con. o United States, which says no person shall be held to answer for an infamous crime unless on presentment or indictment by a grand jury. * * *.

5 Wherefore defendant prays judgment and that he may be discharged from the premises in said information above specified.

WM. GEO. PETIT,
By his attorney FRANK M. ESTES.

And afterwards, to wit, on the 29th day of March, A. D. 1882, the following further proceedings were had and appeared of record in said cause, to wit:

Criminal information for passing counterfeit half dollar knowingly and with intent to defraud.

UNITED STATES, PLAINTIFF,
vs.
WILLIAM G. PETIT, ALIAS WILLIAM GEORGE, defendant. } 1965.

Now comes the district attorney, on behalf of the United States, and also comes said defendant, by F. M. Estes, esquire, and this case now coming on to be heard upon the plea to jurisdiction heretofore argued and submitted, upon consideration thereof and being fully advised in the premises, it is ordered that said plea to jurisdiction be sustained, the district judge dissenting. And thereupon it is ordered that, on the motion of either party, a certificate of division will issue, to the end that
6 the questions involved may be determined by the United States Supreme Court.

It is further ordered that the defendant give bond with surety or enter into a recognizance with surety in the sum of one thousand dollars ($1,000), to appear at the next or any succeeding term of the United States district court for this district, to answer to any indictment that may be found against him for passing or making counterfeit coin, said bond or recog-

nizance to be approved by the United States district judge for this district.

And thereupon said defendant appeared and entered into recognizance with Rudolph Bender as his surety, in conformityt o the order heretofore made.

Thereupon it is ordered that said defendant be discharged in accordance therewith.

And afterwards, to wit, on the 31st day of March, A. D. 1882, the following further proceedings were had and appear of record in said cause, to wit:

Criminal information for passing counterfeit half dollar knowingly and with intent to defraud.

UNITED STATES, PLAINTIFF,
vs.
WILLIAM G. PETIT, ALIAS WILLIAM GEORGE, defendant. } 1965.

7 Be it remembered, that at the March term, 1882, of the United States circuit court for said district, present honorable George W. McCrary, circuit judge, and honorable Samuel Treat, district judge, there was presented for the consideration of said court a plea to its jurisdiction in the case of the United States versus William G. Petit, alias William George, then pending, on the determination whereof said judges were opposed in opinion, the question being whether the United States could proceed by information instead of indictment to try a defendant charged under section 5457 of the Revised Statutes with the violation thereof; that is to say, whether the offences declared in said section are infamous crimes to be prosecuted solely through indictment pursuant to Article V of the amendments to the Constitution of the United States.

And thereupon it is ordered that a certificate of said division of opinion be certified to the Supreme Court of the United States for its determination thereof.

8 In witness whereof the undersigned have hereunto subscribed their names on this the 31st day of March, A. D. 1882.

GEO. W. McCRARY,
Judge of the U. S. Circuit Court for said District.
SAMUEL TREAT,
Judge of the U. S. Cistrict Court for said District.

And afterwards, to wit, on the 29th lay of May, A. D. 1882, the folfowing further proceedings were had and appear of record in said cause, to wit:

Order for transcript to the Supreme Court of the United States.

UNITED STATES, PLAINTIFF,
vs.
WILLIAM J. PETIT, ALIAS, &C., DEFENDANT. } 1965.

Now comes the district attorney, on behalf of the United States, and